

Small Business Administration

§ 101.107

(1) Certify and authenticate originals and copies of any books, records, papers or other documents on file within SBA or extracts taken from them or to provide certification for the purposes authorized in 28 U.S.C. 1733;

(2) SBA award certificates and medals;

(3) SBA awards for career service;

(4) Security credentials and employee identification cards;

(5) Business cards for SBA employees;

(6) Official SBA signs;

(7) Plaques; the design of the SBA seal may be incorporated in plaques for display in Agency auditoriums, presentation rooms, lobbies, offices and on buildings occupied by SBA;

(8) The SBA flag;

(9) Officially authorized reports or publications of the SBA; or

(10) For such other purposes as determined necessary by the Administrator.

(d) *Unauthorized use.* The official seal shall not be used, except as authorized by the Administrator, in connection with:

(1) Contractor operated facilities;

(2) Souvenir or novelty items;

(3) Toys or commercial gifts or premiums;

(4) Letterhead design, except on official SBA stationery;

(5) Clothing or equipment; or

(6) Any article which may disparage the seal or reflect unfavorably upon SBA.

(e) SBA's seal will not be used in any manner which implies SBA endorsement of commercial products or services or of the user's policies or activities.

(f) *Reproduction of Official Seal.* Requests for permission to reproduce the SBA seal in circumstances other than those listed in paragraph (c) of this section must be made in writing to the Administrator. The decision whether to grant permission will be made in writing on a case-by-case basis, in consultation with the General Counsel, with consideration of any relevant factors which may include the benefit or cost to the Agency of granting the request; the unintended appearance of endorsement or authentication by SBA; the potential for misuse; the reputability of the use; the extent of control by SBA over the use; and the ex-

tent of control by SBA over distribution of any products or publications bearing the SBA seal.

(g) *Penalties for Unauthorized Use.* Fraudulent or wrongful use of SBA's seal can lead to criminal penalties under 18 U.S.C. 506 or 18 U.S.C. 1017.

[72 FR 1963, Jan. 11, 2008]

§ 101.106 Does Federal law apply to SBA programs and activities?

(a) SBA makes loans and provides other services that are authorized and executed under Federal programs to achieve national purposes.

(b) The following are construed and enforced in accordance with Federal law—

(1) Instruments evidencing loans;

(2) Security interests in real or personal property payable to or held by SBA or the Administrator such as promissory notes, bonds, guarantee agreements, mortgages, and deeds of trust;

(3) Other evidences of debt or security;

(4) Contracts or agreements to which SBA is a party, unless expressly provided otherwise.

(c) To the extent feasible, SBA uses local or state procedures, especially for recordation and notification purposes, in implementing and facilitating SBA's loan programs. This use of local or state procedures is not a waiver by SBA of any Federal immunity from any local or state control, penalty, tax, or liability.

(d) No person, corporation, or organization that applies for and receives any benefit or assistance from SBA, or that offers any assurance or security upon which SBA relies for the granting of such benefit or assistance, is entitled to claim or assert any local or state law to defeat the obligation incurred in obtaining or assuring such Federal benefit or assistance.

§ 101.107 What SBA forms are approved for public use?

(a) SBA uses forms approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), as amended. You may obtain approved forms for use by the public when applying for or obtaining SBA assistance, or

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when providing services for SBA, from any field office (see § 101.103). You may also use forms which you have prepared yourself, or have obtained from another source, if those forms are identical in every respect to the forms approved by OMB for the same purpose.

(b) Any member of the public who has reason to believe any SBA office or agent is in violation of the Public Protection Clause of the Paperwork Reduction Act (44 U.S.C. 3512 and see 5 CFR 1320.6) should notify SBA. Direct such comments to the Director, Office of Business Operations at 409 3rd Street, SW., Washington, DC 20416.

[61 FR 2394, Jan. 26, 1996, as amended at 72 FR 50038, Aug. 30, 2007]

§ 101.108 Has SBA waived any of the public participation exemptions of the Administrative Procedure Act?

Yes. Despite these exemptions, SBA will follow the public participation requirements of the Administrative Procedure Act, 5 U.S.C. 553, in rulemakings relating to public property, loans, grants, benefits, or contracts.

§ 101.109 Do SBA regulations include the section headings?

Yes. All SBA regulations must be interpreted as including the section headings.

Subpart B—Employment of Private Counsel

§ 101.200 When does SBA hire private counsel?

(a) *Business loans.* SBA may hire private counsel to represent it in regard to business loans when the volume of activity in an area is not sufficient to require a full-time SBA employee, or the area is too remote for economical use of a full-time SBA employee.

(b) *Disaster loans.* SBA may hire private counsel in regard to disaster loans when the disaster presents an emergency and a volume of activity that cannot be promptly and economically serviced by available SBA employees.

§ 101.201 What are the minimum terms of private counsel's employment?

(a) Private counsel must perform all requested work in compliance with

SBA's regulations, policies, and instructions, and take such action as is legally required under the Small Business Act, the Small Business Investment Act, and other laws applicable to SBA.

(b) Private counsel must adhere to the highest standards of professional conduct and maintain confidentiality appropriate to the attorney-client relationship.

(c) Private counsel acts under the supervision of the SBA General Counsel (and designees).

(d) Private counsel usually is compensated at an hourly rate as approved by SBA. Contingency fee agreements may be used if approved by the General Counsel.

(e) Either party may terminate the employment upon written notice.

Subpart C—Inspector General

§ 101.300 What is the Inspector General's authority to conduct audits, investigations, and inspections?

The Inspector General Act of 1978, as amended (5 U.S.C. App. 3) authorizes SBA's Inspector General to provide policy direction for, and to conduct, supervise, and coordinate such audits, investigations, and inspections relating to the programs and operations of SBA as appears necessary or desirable.

§ 101.301 Who should receive information or allegations of waste, fraud, and abuse?

The Office of Inspector General should receive all information or allegations of waste, fraud, or abuse regarding SBA programs and operations.

§ 101.302 What is the scope of the Inspector General's authority?

To obtain the necessary information and evidence, the Inspector General (and designees) have the right to:

(a) Have access to all records, reports, audits, reviews, documents, papers, recommendations, and other materials available to SBA and relating to SBA's programs and operations;

(b) Require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence;